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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/502,390

07/26/2004

Shigeru Hayakawa

120158

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04/21/2008

OLIFF & BERRIDGE, PLC

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ALEXANDRIA, VA 22320-4850

EXAMINER

RUNNING, RACHEL A

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

04/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/502,390	<b>Applicant(s)</b> HAYAKAWA ET AL.	
	<b>Examiner</b> RACHEL A. RUNNING	<b>Art Unit</b> 3732	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 13, 2008 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 5, line 2, states "a cap member", however, "a cap member" was recited in claim 8 upon which claim 5 depends. Unless applicant is intending to claim two separate cap members it is suggested to change claim 5 to "said cap member". It will be examined as "said cap member".

5. Claim 5, line 9, "the shoulder wall" lacks a prior antecedent.

6. Claim 8, line 16, "the shoulder portion" lacks a prior antecedent.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shigeo (JP 11-127944) in view of Stone (US 4,322,020).

Regarding claims 1, 2, and 8, Shigeo discloses a container body (1) having a neck portion (14) and an outer layer (see Figure 1). A hollow comb (24) which has a shaft (21) and one discharge orifice (22) is attached to the container body, a cap member (12) is formed at a lower end of the shaft and is fitted on the neck portion of the container body such that a liquid in the container body is discharged from the orifice, and the cap member is formed as a separate body from the shaft (see Figures 1 and 5; see paragraph 005 of computer translation). The cap member (12) has a peripheral wall and a lower half of the peripheral wall is fitted on the neck portion of the container body, and an inward flange protrudes from an intermediate portion of the peripheral wall and an inner circumference of the inward flange is continuously connected to the pump cylinder (see Figure 1). Wherein the pump cylinder extends from the cap member into the container body and a stem (4) extends from the shaft into the pump cylinder (see Figures 1 and 5; paragraph 008). The stem (4) has a lower end portion to which a cylindrical piston is provided and the stem, the cylindrical piston, and the comb are biased upwardly and vertically movable with respect to the container body and the cap

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member (see Figure 5; paragraph 008). The shaft has a depression rod (26) for depressing the stem, the cylindrical piston, and the comb (see Figure 5; paragraph 0014). Regarding claim 3, the depression rod (26) protrudes laterally outwardly from a lower portion of the shaft (see Figure 1). Regarding claim 4, the device further comprises a stop cylinder (13) fixed to an upper end portion of the pump cylinder and is inserted into an upper part of the pump cylinder (see Figure 1). Shigeo does not disclose an inner delaminatable layer which is shrinkable upon depressurization (claims 1, 2, and 8), and a spring for upwardly biasing an outer flange (claim 5).

Stone teaches a container comprising an inner delaminatable layer (2) that is shrinkable upon depressurization (see Figure 1; column 4, lines 35-40). Stone further teaches a spring (23) for upwardly biasing the shaft (see Figure 3, column 5, lines 20-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Shigeo with an inner delaminatable layer as taught by Stone in order to allow the user to change the inner layer after it has been used. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Shigeo with a spring attached to the shaft as taught by Stone in order to bias the shaft upwardly.

9. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shigeo (JP 11-127944) in view of Stone (US 4,322,020).

The combination of Shigeo and Stone disclose the claimed invention except for the outer layer being a resistive stiff layer.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the outer layer be a resistive stiff layer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

### ***Response to Arguments***

10. Applicant's arguments filed February 13, 2008 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL A. RUNNING whose telephone number is (571)272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner, Art Unit 3732

/Rachel A. Running/  
Examiner  
Art Unit 3732

4/15/2008